

AIR FORCE INDEMNIFICATION GUIDE
for
UNUSUALLY HAZARDOUS OR NUCLEAR RISKS

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OFFICE OF PRIMARY RESPONSIBILITY:

**SAF/AQCS
1060 Air Force Pentagon
Washington DC 20330-1060
(703) 697-6400
DSN 227-6400**

AIR FORCE INDEMNIFICATION GUIDE
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UNUSUALLY HAZARDOUS OR NUCLEAR RISKS

1. PURPOSE

This guide was developed to assist the acquisition community in preparing and reviewing indemnification requests for unusually hazardous or nuclear risks. There are two types of indemnification requests for unusually hazardous or nuclear risks--those for research and development effort authorized by 10 USC 2354 which are approved at the buying-activity level, and those for all other effort authorized by Public Law (PL) 85-804 which are approved by the Secretary of the Air Force. This guide focuses on indemnification requests authorized by PL 85-804; however, it is also useful for research and development indemnification requests. This guide is intended as a “living document” which will be updated based on lessons learned from future indemnification requests.

2. INTRODUCTION

PL 85-804 was passed and Executive Order (EO) 10789 signed in 1958 as part of the reenactment of Title II of the War Powers Act of 1941. The need for indemnification primarily arose with the advent of nuclear power and the use of highly volatile fuels in the missile program. Government and industry were concerned about the possibility of enormous damage suits for uninsurable risks and risks for which insurance coverage was limited. Under the authority of PL 85-804 and EO 10789, indemnification is appropriate when a contractor is exposed to risks which are unusually hazardous or nuclear in nature and for which insurance coverage is not available at a reasonable cost. If these circumstances exist, indemnification may be granted if it is determined to facilitate the national defense.

Air Force practice is to grant indemnification when a contractor is exposed to risks which are so unusually hazardous in nature and the risk of loss so potentially great that the contractor's financial or productive capabilities would be severely impacted or disrupted should an accident occur. With respect to the unusually hazardous risk, either (1) insurance coverage is not available to cover the risk, (2) potential claims may exceed the available insurance coverage, or (3) the cost of insurance is unreasonably high making the contract inordinately expensive.

Under the provisions of EO 10789, contractors may be indemnified only for risks that are “unusually hazardous or nuclear” in nature. The term “unusually hazardous” is not defined. The determination of what constitutes unusually hazardous or nuclear risks requires a reasoned judgment based on the facts and circumstances of each case. Such risks must result directly from the performance of activities under the particular contract. It must be demonstrated the manufacturing or operation of the system or equipment, or other aspects of contract performance, entails activities that are unusually hazardous or nuclear. It must also be shown the activity is “unusually hazardous” as distinguished from “hazardous.” Many private sector activities are hazardous. For example, the manufacturing, storing, loading, or burning of jet aircraft fuel is hazardous. There is a possibility for explosion resulting in death and property damage. By contrast, the manufacturing, casting, storing, or burning of solid rocket propellants used for space launch vehicles is unusually hazardous. Solid propellants are highly volatile and their explosive potential several times greater than jet fuel, resulting in a significantly greater risk to life and

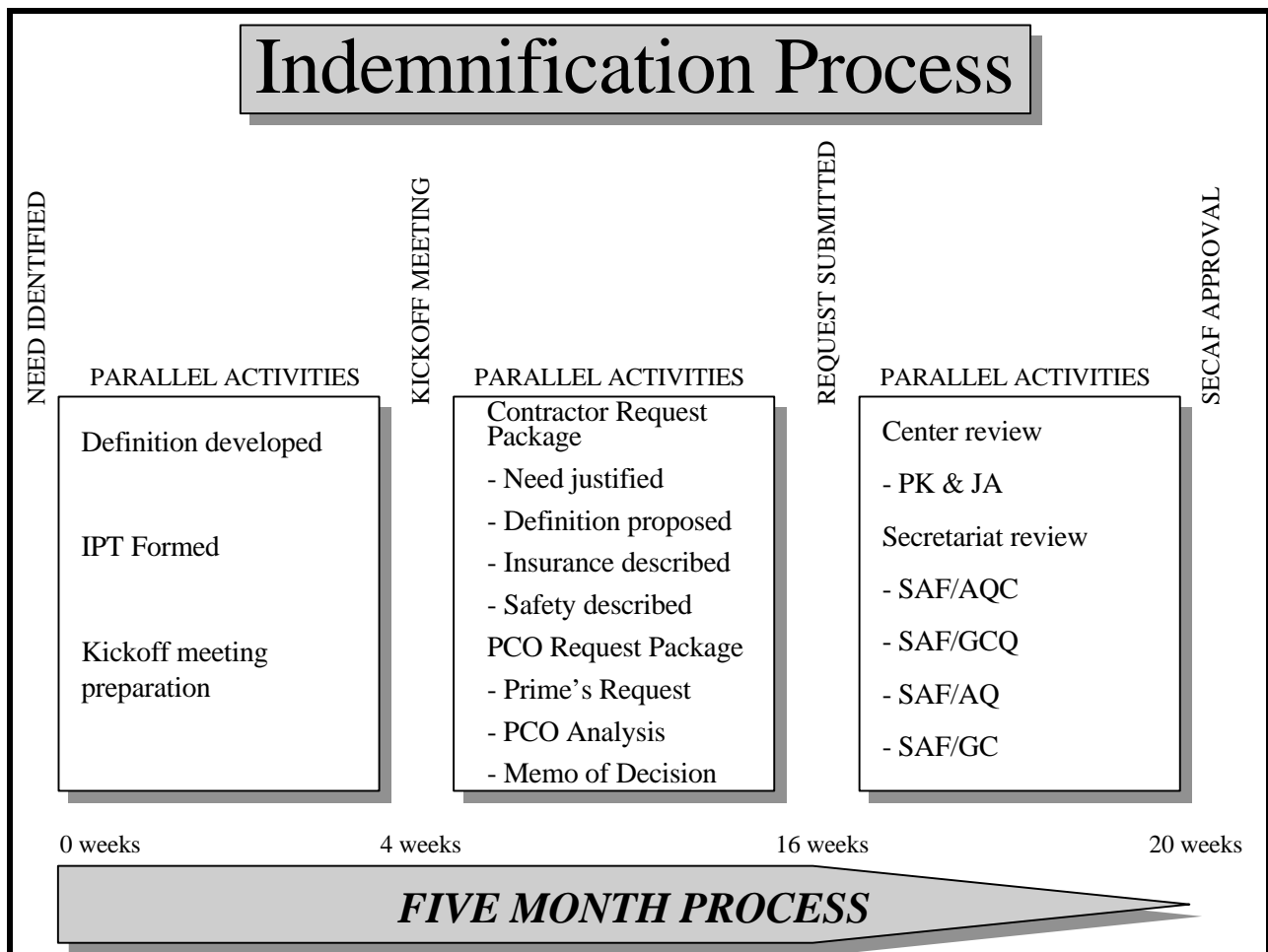
property. While adequate insurance against risks associated with jet aircraft fuel is available at a reasonable cost, the availability of insurance against risks associated with solid rocket propellants is limited and significantly more costly.

Just because a risk is unusually hazardous or nuclear does not mean it should automatically be indemnified. If adequate insurance coverage is available at a reasonable cost to cover potential losses resulting from the occurrence of the unusually hazardous incident, policy, as reflected in the Federal Acquisition Regulation (FAR), is not to indemnify the risk.

The Air Force chartered a process action team to examine past practices and develop an improved process to expedite disposition of indemnification requests.

3. INDEMNIFICATION PROCESS

The goal of the indemnification process is to achieve consensus among all parties prior to submission of indemnification requests. The process emphasizes several fundamental principles. These include early identification of the need for indemnification, use of an Integrated Process Team (IPT) to prepare and review indemnification requests in a parallel rather than a serial manner, use of a common definition for all indemnification actions related to a class of product (e.g., space launch vehicles or Civil Reserve Air Fleet), and optimize use of Defense Contract Management Command (DCMC) insurance and safety specialists. The new process time will vary with the complexities of each indemnification request; however, it typically should require no more than five months. Below is a snapshot of the indemnification process.



3.1 Need Identified: The process starts when the need for indemnification is identified. This should occur as early as possible during acquisition planning. For example, the PCO or contractor should identify the need for indemnification sufficiently in advance of solicitation release when preparing to buy a product or service for which indemnification has historically been granted, such as a space launch vehicle or Civil Reserve Air Fleet (CRAF). Once the need is identified, agreement on a definition, formation of an IPT, and preparation for the kickoff meeting should be worked in parallel.

3.2 Definition: Once the need is identified, a definition of unusually hazardous or nuclear risks should be developed. A sample definition which has been approved for medium and heavy lift launch vehicles is included in the attached sample PCO request package. The definition must clearly and precisely describe the risks to be indemnified. In the past, disagreement upon a definition created extensive problems and delays in the indemnification process. Therefore, use of a common definition for a particular class of product is strongly encouraged, and variations from the common definition should be rare. For example, all medium and heavy lift launch vehicles use the same definition. This greatly expedites the approval process and ensures common treatment of contractors by the government.

3.3 IPT Formed: After the need is identified, the PCO should establish an IPT. The PCO and prime contractor should identify all individuals likely to play a significant role in preparing and reviewing the request for indemnification and who therefore should be represented on the IPT. These include, but are not limited to, representatives from the prime contractor and subcontractors that may be indemnified, the PCO, buying activity and secretariat contracting and legal reviewers, and insurance and safety specialists from the prime and subcontractors and DCMC. DCMC representation is especially useful given past problems documenting and reviewing contractor insurance coverage. It is also vital that center and secretariat reviewers be included as IPT members, even if they cannot attend IPT meetings in person. Key to a smooth and quick coordination and approval process is to involve these individuals in the resolution of issues before request documents are finalized. Attached is a responsibility matrix to assist the PCO and prime contractor when identifying individuals for the IPT.

3.4 Kickoff Meeting Preparation: Once IPT members are identified, the PCO and prime contractor should begin preparing for an IPT kickoff meeting. This includes preparing a briefing on the indemnification process, documentation requirements, and each IPT member's responsibilities. A sample briefing is attached.

3.5 Kickoff Meeting: It is important to get as many IPT members as possible to attend the kickoff meeting. Equally important to briefing the procedures required for obtaining indemnification is getting the right players from the prime contractor, subcontractors, and government communicating with each other. For example, it's crucial for the DCMC insurance and safety specialists to discuss insurance and safety requirements with their counterparts from the prime and subcontractors. It is also important to involve as many government reviewers as possible, setting the stage for working issues in parallel with the development of the request packages. It may not be possible to schedule all IPT members for the kickoff, but the more who can attend the better. This will very likely be the only "full IPT" meeting. Additional meetings will be held on an as needed basis and attended (perhaps via telecon) by a subset of the full IPT (e.g., a safety specialists meeting). After the kickoff meeting, work the contractor request, the definition of unusually hazardous or nuclear risks, insurance reviews, safety reviews, the PCO

analysis, and the Secretary of the Air Force Memorandum of Decision in parallel, resolving issues as they arise through interaction of IPT members.

3.6 Contractor Request Package: The prime and subcontractors must submit requests for indemnification to the PCO, with the subcontractor requests flowing through the prime. A checklist is attached for guidance in preparing and reviewing contractor's requests. Requests must include the following:

3.6.1 Need Justified: The contractor must explain why it believes indemnification of unusually hazardous or nuclear risks is justified. In doing so, it should be mindful that only risks which are unusually hazardous (rather than merely hazardous) or nuclear in nature will be indemnified; it must demonstrate the manufacturing or operation of the system or equipment, or other aspects of contract performance, entails activities that are unusually hazardous or nuclear; and it must address why insurance coverage is not reasonably available.

3.6.2 Definition Proposed: The contractor must include a definition of unusually hazardous or nuclear risks in its request. This should be the definition previously agreed upon by the IPT.

3.6.3 Insurance Described: The request also must include a summary of the contractor's insurance coverage pertinent to the defined risks. The insurance coverage should be presented in summary fashion using a matrix format with narrative support as necessary. A sample matrix is included with the attached contractor request package checklist.

3.6.4 Safety Described: The request must also briefly describe the contractor's safety program. The attached contractor request package checklist includes safety issues which must be addressed. Preferably, an industrial safety program has been evaluated by the government as part of routine contract administration functions. If so, this should be referenced in the request, and will greatly facilitate the indemnification process.

The prime contractor is responsible for the quality of the subcontractors' request packages, as well as its own. In order to ensure the consolidated prime and subcontractor request package is internally consistent, knowledgeable insurance and safety specialists from the prime contractor must work with their counterparts at the subcontractors to oversee the preparation of the subcontractor requests. The prime and subcontractors should prepare their requests in an IPT environment. For example, contractor insurance specialists should discuss their insurance coverage with DCMC specialists, resolve issues, and determine the necessary level of detail to include in their request before finalizing the written package. Issues that require opinions from buying activity or secretariat reviewers should be worked through buying activity and secretariat IPT members. All aspects of the contractor request should be worked in this parallel manner, including the definition of unusually hazardous or nuclear risks. By doing so, the final request package should flow smoothly and quickly through the government review and approval process.

3.7 PCO Request Package: While the prime and subcontractor requests are being prepared, the PCO should begin developing the request package for submittal to the secretariat. This package includes the prime contractor's request, the PCO analysis, and Secretary's memorandum of decision. Attached is a sample format for the PCO request package.

3.7.1 Prime's Request: This is simply the prime contractor's portion of the contractor request package described above. The Secretary can authorize the PCO to approve extending indemnification to subcontractors. Therefore, subcontractor requests need not be submitted to the Secretary. This will significantly reduce the amount of paperwork required for review by the secretariat staff, thereby expediting the review and approval process.

3.7.2 PCO Analysis: This is the central document of the PCO request package. It should address all requirements of FAR 50.403-2. In doing so, the PCO analysis will discuss all pertinent issues. It should be written in a thorough but succinct fashion, and will serve as the foundation upon which the Secretary's approval decision is made. Attachments to the PCO analysis will include memorandums from the DCMC insurance and safety specialists describing why the prime contractor's insurance coverage and safety programs are adequate, and a memorandum from a responsible authority determining the indemnification action will facilitate the national defense. For Program Executive Officer (PEO) or Designated Acquisition Commander (DAC) programs, the PEO or DAC will sign this memorandum. For other programs, this memorandum must be signed by a general officer or equivalent civilian Department of Defense senior executive.

3.7.3 Memorandum of Decision: A proposed memorandum of decision for signature by the Secretary of the Air Force is included in the PCO request package. The agreed upon definition of unusually hazardous or nuclear risks is attached to this memorandum. By signing the memorandum of decision, the Secretary authorizes the PCO to include the attached definition, as well as the clause at FAR 52.250-1, *Indemnification Under Public Law 85-804*, in the prime contract. As stated above, the Secretary can also authorize the PCO to extend indemnification of unusually hazardous or nuclear risks to subcontractors (i.e., allow the prime contractor to flow indemnification provisions down to specified subcontractors). This authorization is consistent with FAR 50.403-2(d). The Secretary must identify the definition of unusually hazardous or nuclear risks authorized for extension to subcontractors. In all likelihood, this will be the same definition authorized for the prime contractor.

Attached is a sample PCO request. Preparation of the PCO request should occur, to the greatest extent possible, in parallel with preparation of contractor requests. Buying activity and secretariat reviewers who are members of the IPT should be involved in the resolution of all issues before the request is finalized. In fact, it may be useful to ask these individuals to review drafts of the PCO request package. This will help to ensure the final request package flows smoothly and quickly through the government review and approval process.

3.8 Request Submitted: Once the PCO request is complete, it should be staffed through the buying activity contracting and legal reviewers. If the PEO is the responsible authority for determining the indemnification action will facilitate the national defense (see paragraph 3.7.2), once the request is staffed at the buying activity it is submitted to SAF/AQCS for staffing to the PEO for signature on the national defense determination, and then on to the Secretary for approval of the indemnification request. If the DAC, or for non-PEO and non-DAC programs, a general officer or equivalent, must sign the national defense determination, this signature must be obtained by the PCO before submitting the request to SAF/AQCS for staffing to the Secretary. Ideally, all issues have been resolved with the reviewers on the buying activity and secretariat staffs via the IPT process. A staff summary sheet documenting buying activity contracting and legal coordination and System Program Director approval, if applicable, should be submitted to SAF/AQCS along with PCO request package. SAF/AQCS will prepare a staff summary sheet for

processing the request to the Secretary for approval. It should include coordination or approval from SAF/AQ, SAF/GC, SAF/US, and SAF/OS. Approval of the request is signified by the Secretary of the Air Force's signature on the memorandum of decision. Samples of the buying activity-level and secretariat-level staff summary sheets are attached.

4. ADDITIONAL INFORMATION

4.1 Competitive Acquisitions: The process described in this guide is more easily adapted to a sole source acquisition than a competitive buy; however, it should still be applied to the greatest extent possible in competitive situations. In a competitive acquisition for an item historically indemnified (such as a space launch vehicle), the contracting officer might include a definition of unusually hazardous or nuclear risks and the FAR clause 52.250-1 in the draft solicitation. Also in a competitive environment, potential offerors can identify the desire for indemnification during the draft solicitation process or during pre-solicitation meetings between government and industry. A key to success is identifying the need for indemnification early enough to allow adequate time to process the request before contract award. A difficult scenario arises if an offeror in a competitive acquisition includes an indemnification provision in its proposal without any foreknowledge by the PCO. The time required to evaluate and process the request would almost certainly jeopardize the contract award schedule. Regardless of how and when the need for indemnification is identified, it is imperative the PCO ensure IPT procedures are employed in a manner which will not compromise the integrity of the competitive process.

4.2 Contingency Provision: In almost all circumstances, a request for indemnification should be approved prior to award of the affected contract action(s). In the exceptional case where such approval cannot be obtained before award and the contractor refuses to complete performance without indemnification, a contingency provision may be considered. For example, a contractor will begin the manufacturing process of a space launch vehicle without indemnification, but will not launch the vehicle without indemnification. The contingency provision would specify the point at which indemnification must be approved for contract performance to continue. Under the rare circumstance when use of such a contingency provision is deemed appropriate, use of such a provision requires approval by SAF/AQ. Prior concurrence of SAF/AQ is needed because inclusion of a contingency provision makes complete program execution dependent on the subsequent approval of the Secretary to indemnify.

4.3 "By-Scope" Versus "By-Contract" Approval: A technique to reduce the number of indemnification approvals required is to request indemnification approval from the Secretary for a scope of effort instead of on a contract-by-contract basis. For example, indemnification can be requested for the production and launch of a specific space launch vehicle by the same contractor, regardless of what contract the vehicle is produced or launched under. When production or launch is delayed by the government and shifted to a successor contract, the approved indemnification provision (definition of unusually hazardous or nuclear risks and FAR clause 52.250-1) will follow the specified launch vehicle to the successor contract, eliminating the need to reobtain Secretarial indemnification approval. The memorandum for approval must specify the extent of by-scope indemnification authorized by the Secretary.

4.4 No AFMC Reviews: Reviews and approvals are not longer required by Air Force Materiel Command.

4.5 Common Definition: Use of a common definition for all indemnification actions related to a class of product (e.g., space launch vehicles, CRAF) expedites the review and approval process. For example, many space launch vehicles are using the common definition of unusually hazardous risks found in attachments to this guide. When flowed down to subcontractors, some of the provisions of this definition may not apply to a particular subcontractor. However, instead of tailoring the provision for each subcontractor, which would require the Secretary to approve each tailored version, the unnecessary provisions are considered “self deleting” in that they don’t apply to a particular subcontractor’s unusually hazardous or nuclear risks.

4.6 Flow Down to Subcontractors: As discussed, the Secretary can authorize the PCO to extend indemnification to subcontractors. In fact, barring any unusual circumstances, this authorization is highly encouraged as a streamlining measure. The PCO’s determination of which subcontractors, if any, to extend indemnification to is judgmental. At the extreme, it could be argued that the product of virtually any subcontractor, down to the lowest-tiered vendor, could be responsible for a catastrophic accident, and therefore virtually all subcontractors should be indemnified if the prime is indemnified. For example, a microcircuit purchased “off the shelf” and which of itself is not inherently a hazardous item could malfunction causing a chain reaction which leads to explosion of a launch vehicle at takeoff. It is probably unlikely a third party damage suit would be brought against the vendor for this product. It may be improbable an investigation would reveal the microcircuit malfunction initiated the explosion, or the vendor may be a small contractor without the means to offer a settlement of the magnitude desired by the claimant. More likely, the third party claim would be against the government, prime contractor, or perhaps the subcontractor of the major subsystem housing the microcircuit. Typically only the subcontractors that manufacture major subsystems which present unusually hazardous or nuclear risks should be considered for indemnification. This extension of indemnification to a subcontractor should typically occur at the same time the indemnification is provided to the prime contractor. Delays in approving subcontractor indemnification should be rare. The PCO analysis must identify the subcontractors to be indemnified, describe why they need indemnification, and discuss the review and approval process which the PCO has conducted, including verification of insurance and programs coverage by DCMC. The memorandum of decision signed by the Secretary must authorize the PCO to extend indemnification to identified subcontractors. Subsequent changes or additions of indemnified subcontractors must be approved by the Secretary.

4.7 Facilitate the National Defense: As stated, the PEO or DAC, or for non-PEO and non-DAC programs, a general officer or equivalent civilian Department of Defense senior executive, must determine the indemnification action will facilitate the national defense. Reasons indemnification will facilitate the national defense include, but are not limited to, jeopardizing a critical defense production capacity, a company’s refusal to perform without indemnification when no other company is available to provide a defense critical product or service, and avoidance of inordinately expensive critical defense products or services due to unreasonably high insurance costs.

5. SUMMARY

The Air Force has successfully tested this indemnification process on some of its space launch vehicle programs. This guide captures the benefits of preparing documentation and working issues in parallel through an Integrated Process Team approach. To be successful, individuals representing all parties involved in the preparation and review process, both industry and

government, must be included in the IPT process. They must focus on early identification and resolution of issues, preferably before the contractor and PCO request packages are finalized and submitted for review and approval. Additionally, by using the attached sample documents when preparing request packages, paperwork will be standardized, adding further efficiency to the review and approval process.

Attachments:

1. Sample Kickoff Meeting Briefing
2. Contractor Request Package Checklist
3. Sample PCO Request Package
4. Sample Staff Summary Sheets
5. Responsibility Matrix
6. References

ATTACHMENT 1 - SAMPLE KICKOFF MEETING BRIEFING

Following are sample charts for an IPT kickoff meeting to be attended by prime and subcontractors and government personnel from the buying center, DCMC, and the Air Force secretariat. The charts are provided as a guide to the type of information which should be addressed at a kickoff meeting. When preparing similar charts, remember the kickoff meeting is intended to introduce the subject of indemnification, explain why indemnification might be appropriate for the case at hand, describe what activities are considered unusually hazardous or nuclear in nature, describe the necessary contents of the contractor request packages, and get prime, subcontractor, and government counterparts to start working together.

INDEMNIFICATION PROCESS

INDEMNIFICATION UNDER
PUBLIC LAW 85-804

WHEN INDEMNIFICATION MAY BE APPROPRIATE

- CONTRACTOR IS EXPOSED TO UNUSUALLY HAZARDOUS OR NUCLEAR RISKS
- INSURANCE COVERAGE IS NOT AVAILABLE AT A REASONABLE COST TO COVER THE RISKS
- POTENTIAL FOR SEVERE DISRUPTION OF CONTRACTOR'S FINANCIAL/ PRODUCTIVE CAPABILITIES

FUNDAMENTAL PRINCIPLES

- ACHIEVE CONSENSUS AMONG ALL STAKEHOLDERS PRIOR TO SUBMISSION OF INDEMNIFICATION REQUEST TO SECAF
- EARLY IDENTIFICATION OF NEED FOR INDEMNIFICATION
- USE OF AN INTEGRATED PROCESS TEAM (IPT)
- PREPARE AND REVIEW REQUEST IN A PARALLEL VERSUS SERIAL MANNER

FUNDAMENTAL PRINCIPLES

(cont.)

- *RESOLVE ISSUES PRIOR TO SUBMISSION OF REQUEST PACKAGES TO SECAF*
- *OPTIMIZE USE OF DEFENSE CONTRACT MANAGEMENT COMMAND (DCMC) INSURANCE AND SAFETY SPECIALISTS*
- *USE A COMMON DEFINITION FOR ALL INDEMNIFICATION ACTIONS RELATED TO A CLASS OF PRODUCT*
 - *E.G.. SPACE LAUNCH VEHICLES OR CIVIL RESERVE AIR FLEET (CRAF)*

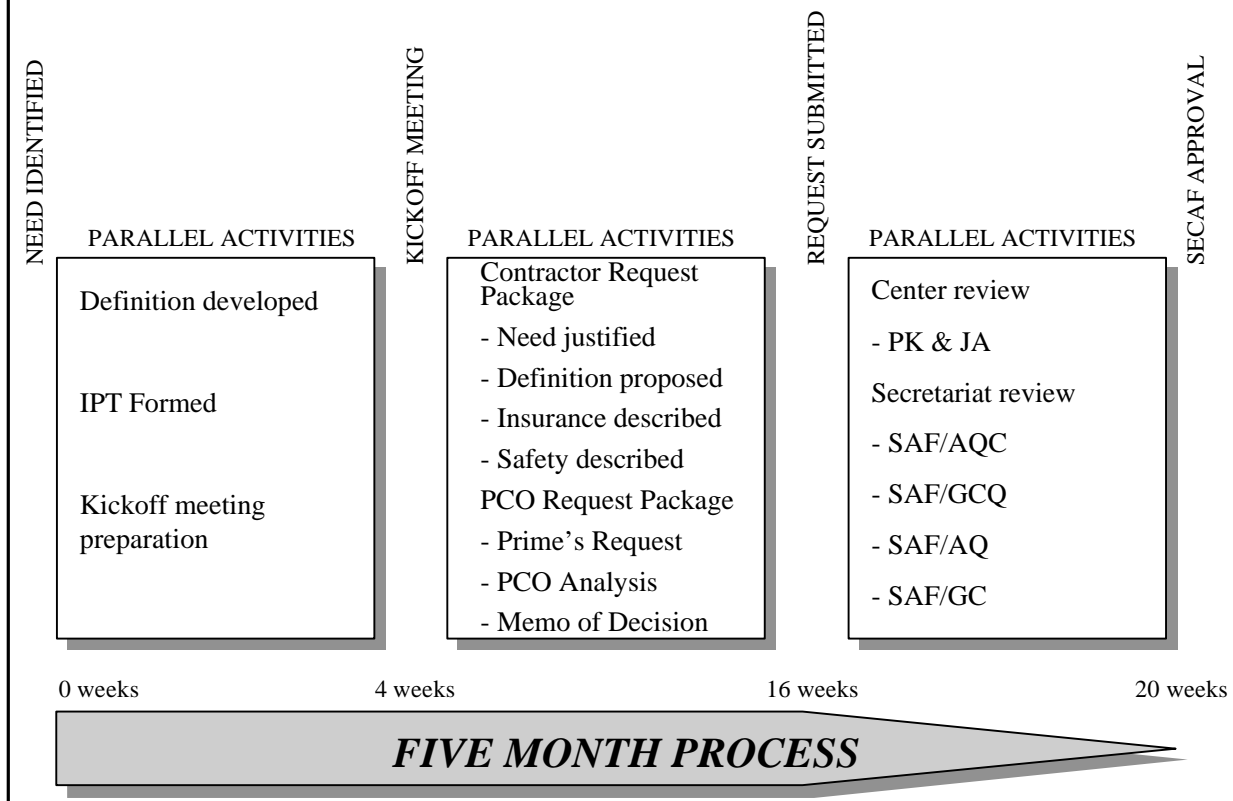
IDENTIFICATION OF NEED FOR INDEMNIFICATION

- **SOLE SOURCE ENVIRONMENT:**
 - **CONTRACTOR OR PCO IDENTIFIES NEED**
- **COMPETITIVE ENVIRONMENT :**
 - **POTENTIAL OFFERORS CAN IDENTIFY THE DESIRE FOR INDEMNIFICATION DURING PRESOLICITATION PHASE**

FORMATION OF IPT

- **PCO AND PRIME CONTRACTOR IDENTIFY ALL SIGNIFICANT PLAYERS IN THE INDEMNIFICATION PREPARATION AND REVIEW PROCESS**
 - **REPRESENTATIVES FROM PRIME AND SUBCONTRACTORS**
 - **BUYING ACTIVITY AND SECRETARIAT CONTRACTING AND LEGAL REVIEWERS**
 - **INSURANCE AND SAFETY SPECIALISTS FROM PRIME AND SUBCONTRACTORS AND DCMC**

Indemnification Process



DEFINITION

- DEVELOP DEFINITION OF UNUSUALLY HAZARDOUS RISKS
 - DEFINITION MUST CLEARLY AND PRECISELY DESCRIBE THE RISKS TO BE INDEMNIFIED
 - USE OF COMMON DEFINITION FOR PARTICULAR CLASS OF PRODUCT IS STRONGLY ENCOURAGED, VARIATIONS FROM COMMON DEFINITION SHOULD BE RARE

CONTRACTOR REQUEST PACKAGE

- PRIME CONTRACTOR SUBMITS REQUEST FOR INDEMNIFICATION TO THE PCO
- SUBCONTRACTOR REQUESTS FOR INDEMNIFICATION (IF ANY) MUST FLOW THROUGH THE PRIME
 - PRIME CONTRACTOR IS RESPONSIBLE FOR THE QUALITY OF THE SUBCONTRACTOR REQUEST PACKAGES AS WELL AS ITS OWN

CONTRACTOR REQUEST PACKAGE (cont.)

- CONTRACTOR MUST EXPLAIN WHY INDEMNIFICATION IS JUSTIFIED
 - ONLY RISKS WHICH ARE UNUSUALLY HAZARDOUS (AS OPPOSED TO MERELY HAZARDOUS) OR NUCLEAR IN NATURE WILL BE INDEMNIFIED
 - DEMONSTRATE THAT THE MANUFACTURING OR OPERATION OF THE SYSTEM OR EQUIPMENT, OR OTHER ASPECTS OF CONTRACT PERFORMANCE, INVOLVES ACTIVITIES THAT ARE UNUSUALLY HAZARDOUS OR NUCLEAR

CONTRACTOR REQUEST PACKAGE (cont.)

- INCLUDE PROPOSED DEFINITION OF UNUSUALLY HAZARDOUS OR NUCLEAR RISKS
- ADDRESS WHY INSURANCE COVERAGE IS NOT REASONABLY AVAILABLE

INSURANCE INFORMATION

- DESCRIPTION OF EXISTING INSURANCE
 - SUMMARIZE THE CONTRACTORS' INSURANCE COVERAGE WHICH IS PERTINENT TO THE DEFINED RISKS
 - PRESENT IN A MATRIX FORMAT WITH NARRATIVE SUPPORT AS NECESSARY

INSURANCE INFORMATION

(cont.)

- CONTRACTOR INSURANCE SPECIALISTS SHOULD DISCUSS INSURANCE COVERAGE WITH DCMC SPECIALISTS
 - DETERMINE THE NECESSARY LEVEL OF DETAIL TO INCLUDE IN REQUEST BEFORE FINALIZING THE WRITTEN PACKAGE

SAFETY INFORMATION

- REQUEST MUST BRIEFLY DESCRIBE CONTRACTORS' SAFETY PROGRAM
- IF GOVERNMENT ROUTINELY EVALUATES THE CONTRACTOR'S INDUSTRIAL SAFETY PROGRAM -- SHOULD BE REFERENCED IN REQUEST

SAFETY INFORMATION (cont.)

- PRIME CONTRACTOR IS RESPONSIBLE FOR THE QUALITY OF THE SUBCONTRACTOR REQUEST PACKAGES
 - PRIME CONTRACTOR SAFETY SPECIALISTS SHOULD WORK IN AN IPT ENVIRONMENT WITH THEIR SUBCONTRACTOR COUNTERPARTS

PCO REQUEST PACKAGE

- PCO SHOULD BEGIN DEVELOPING THE SECRETARIAL REQUEST PACKAGE WHILE PRIME AND SUBCONTRACTOR REQUESTS ARE BEING WORKED
- ONLY INCLUDE PRIME CONTRACTOR'S PORTION OF REQUEST PACKAGE SUBMITTED TO PCO
 - SUBCONTRACTOR REQUEST NEED NOT BE SUBMITTED TO SECRETARY

PCO REQUEST PACKAGE

(cont.)

- PCO ANALYSIS:
 - SHOULD ADDRESS ALL OF FAR PART 50.403-2 (AS SUPPLEMENTED)
 - ANALYSIS WILL DISCUSS ALL PERTINENT ISSUES
 - SHOULD BE WRITTEN IN A THOROUGH BUT SUCCINCT FASHION

PCO REQUEST PACKAGE

(cont.)

- ATTACHMENTS TO PCO ANALYSIS:
 - DOCUMENTATION FROM DCMC INSURANCE INDICATING THE CONTRACTOR'S INSURANCE PROGRAM IS ADEQUATE FOR THE RISKS TO BE INDEMNIFIED
 - DOCUMENTATION FROM DCMC SAFETY INDICATING THE CONTRACTOR IS COMPLYING WITH APPLICABLE GOVERNMENT SAFETY REQUIREMENTS AND HAS AN ADEQUATE, EXISTING, AND ON-GOING INDUSTRIAL SAFETY PROGRAM

PCO REQUEST PACKAGE

(cont.)

- ATTACHMENTS (cont.):
 - MEMORANDUM FROM RESPONSIBLE AUTHORITY STATING THE INDEMNIFICATION FACILITATES THE NATIONAL DEFENSE
 - MEMORANDUM OF DECISION FOR SIGNATURE BY THE SECRETARY OF THE AIR FORCE
 - ATTACH AGREED- UPON DEFINITION OF UNUSUALLY HAZARDOUS OR NUCLEAR RISKS TO THE MEMORANDUM

PCO REQUEST PACKAGE

(cont.)

- STAFF REQUEST THROUGH THE BUYING ACTIVITY CONTRACTING AND LEGAL REVIEWERS
- OBTAIN PEO OR DAC COORDINATION ON REQUEST
 - FOR NON-PEO/DAC PROGRAMS, A GENERAL OFFICER OR EQUIVALENT
- TRY TO RESOLVE ALL ISSUES WITH BUYING ACTIVITY/ SECRETARIAT REVIEWERS VIA THE IPT PROCESS

PCO REQUEST PACKAGE

(cont.)

- A STAFF SUMMARY SHEET, WITH BUYING ACTIVITY COORDINATION, SHOULD BE INCLUDED IN THE REQUEST
- SUBMIT PACKAGE TO SAF/AQCS FOR STAFFING AND SECRETARIAL APPROVAL
- SEE SAMPLE PCO REQUEST PACKAGE ATTACHED TO INDEMNIFICATION GUIDE

SECRETARIAT PROCESSING

- SAF/AQCS WILL SUBMIT THE REQUEST TO SECAF FOR APPROVAL (AFTER COORDINATION WITH SAF/AQ, SAF/GC, SAF/US AND SAF/OS).
- APPROVAL IS SIGNIFIED BY *SECAF* SIGNATURE ON THE MEMORANDUM OF DECISION
- SAMPLE SECRETARIAT STAFF SUMMARY SHEETS ARE ATTACHED TO INDEMNIFICATION GUIDE

INDEMNIFICATION “BY SCOPE” VERSUS “BY CONTRACT”

- REQUEST APPROVAL FROM THE SECRETARY FOR A SCOPE OF EFFORT INSTEAD OF A CONTRACT-BY-CONTRACT BASIS WHERE FEASIBLE
 - ELIMINATES NEED TO PROCESS SUCCESSIVE INDEMNIFICATIONS DURING EXECUTION OF PROGRAM

INDEMNIFICATION “BY SCOPE” VERSUS “BY CONTRACT”

- EXAMPLE: REQUEST INDEMNIFICATION FOR THE PRODUCTION/ LAUNCH OF SPECIFIC SPACE LAUNCH VEHICLES BY THE SAME CONTRACTOR, REGARDLESS OF WHAT CONTRACT THE VEHICLE IS PRODUCED OR LAUNCHED UNDER
 - ACCOMMODATES PRODUCTION/LAUNCH DELAYS
 - APPROVED INDEMNIFICATION CLAUSE WILL FOLLOW THE LAUNCH VEHICLE TO THE SUCCESSOR CONTRACT

ADDITIONAL CONSIDERATIONS

- USE A COMMON DEFINITION FOR ALL INDEMNIFICATION ACTIONS RELATED TO THE CLASS OF PRODUCT (E.G., SPACE LAUNCH VEHICLES, CRAFT)
 - EXPEDITES THE REVIEW AND APPROVAL PROCESS
 - WHEN FLOWED DOWN TO SUBCONTRACTORS, SOME OF THE DEFINITION MAY NOT APPLY-- ARE SELF-DELETING

FLOWDOWN CONSIDERATIONS

- SECAF CAN AUTHORIZE THE PCO TO EXTEND INDEMNIFICATION TO SUBCONTRACTORS
 - MUST BE IN MEMORANDUM OF DECISION
- THE PCO'S DETERMINATION OF WHICH SUBCONTRACTORS SHOULD BE INDEMNIFIED IS A "JUDGMENT CALL"

FLOWDOWN CONSIDERATIONS

- PCO ANALYSIS MUST IDENTIFY THE SUBCONTRACTORS TO BE INDEMNIFIED
 - DESCRIBE WHY INDEMNIFICATION IS NEEDED
 - DISCUSS THE REVIEW S WHICH THE PCO HAS CONDUCTED FOR THE SUBS (e.g., insurance, safety)

CONTINGENCY PROVISION

- IN MOST ALL CIRCUMSTANCES, REQUEST FOR INDEMNIFICATION SHOULD BE APPROVED PRIOR TO AWARD OF THE AFFECTED CONTRACTING ACTION(S).
- USE OF CONTINGENCY PROVISION REQUIRES APPROVAL BY SAF/AQ

SUMMARY

- THE AIR FORCE HAS SUCCESSFULLY TESTED THIS INDEMNIFICATION PROCESS ON SOME OF ITS LAUNCH VEHICLE PROGRAMS
- TO BE SUCCESSFUL, ALL PARTIES INVOLVED IN THE PREPARATION AND REVIEW PROCESS (GOV/INDUSTRY) MUST BE INCLUDED IN THE IPT PROCESS

ATTACHMENT 2 - CONTRACTOR REQUEST PACKAGE CHECKLIST

Following is a checklist which should be used by prime and subcontractors for their requests for indemnification. Prime contractor requests are submitted to the PCO. Subcontractor requests flow through the prime contractor to the PCO. Ideally, all requests should be formally submitted to the PCO at the same time, under a cover letter from the prime contractor. Of special note is the insurance matrix. Use of this matrix will help relate applicable insurance coverages to the specific risks for which indemnification is requested.

CONTRACTOR REQUEST PACKAGE CHECKLIST

		FAR CITE	YES	NO	N/A
1	Does the contractor identify the contract for which the indemnification clause is required.	FAR 50.403-1(a)(1)			
2	Does the contractor identify and define the unusually hazardous/nuclear risks for which indemnification is requested and state how they would be exposed to them.	FAR 50.403-1(a)(2)			
3	Does the contractor's request include the definition agreed upon by the Indemnification IPT for unusually hazardous risks. If the request for indemnification is in support of space launch activities, is the approved version for space launch activities included in the request.	Indemnification Guide			
4	Is the definition clear, precise and directly related to the hazardous/nuclear nature of the activity.	Indemnification Guide			
5	Does the definition focus on risks for which insurance is not reasonably available at a reasonable cost.	Indemnification Guide			
6	Does the request elaborate on the "unusually" hazardous vs. hazardous nature.	Indemnification Guide			
7	Does the request contain the contractor's statement of insurance coverage executed by a corporate official with binding authority applicable to the defined risks.	FAR 403-1(a)(3)			
8	Does the request include the following: a. Names of insurance companies, policy number, expiration dates. b. Description of the types of insurance (including the extent to which the contractor is self-insured or intends to self insure) c. Dollar limits per occurrence and annually, and any other limitation for relevant segments of the total insurance coverage. d. Deductibles, if any, applicable to losses under the policies. e. Any exclusions from coverages. f. Applicable workers' compensation insurance coverage.	FAR 403-1(a)(3)			
9	Does the request include an insurance matrix that summarizes the insurance information (see Atch-1).	Indemnification Guide			
10	Does the request include controlling or limiting factors for establishment of the amount of financial protection the contractor is to provide and maintain, including availability, cost, and terms of additional insurance or other forms of financial protection.	FAR 50.403-1(a)(4)			
11	Does the request include information on whether or not the contractor's insurance program has been approved or accepted by any government agency.	FAR 50.403-1(a)(5)			

		FAR CITE	YES	NO	N/A
12	Does the contractor have an indemnification agreement covering similar risks under any other government program. If so, does the request include a brief description of any limitations.	FAR 50.403-1(a)(5)			
13	If the contractor is a division or subsidiary of a parent organization, does the request include a. a statement of any insurance coverage of the parent corporation that bears the risks for which the contractor seeks indemnification and b. a description of the precise legal relationship between parent and subsidiary or division.	FAR 50.403-1(a)(6)			
14	Does the request describe the contractor's industrial safety program (see A-2).	Indemnification Guide			
15	Does the request indicate if the contractor's safety programs are routinely assessed by DCMC specialized safety personnel.	Indemnification Guide			
16	If the request includes the subcontractors' request for indemnification, do their packages provide the information required by FAR 50.403 as supplemented.	FAR 50.403, Indemnification Guide			

INSURANCE MATRIX

Subject to the mutual understanding that all insurance coverages to be documented below are inherently subject each to its own individual policy terms, conditions, exclusions and limitations, all as usually and customarily associated with the particular lines of insurance indicated, as well as subject to the specific loss scenario that may develop, please enter the data requested, disclosing both type of coverage (e.g., comprehensive general liability, aircraft products liability, etc) and amounts insured or limits of liability. We recognize and acknowledge that any insurance available to respond to a particular loss event will necessarily be subject to its own specific insurance policy provisions bearing thereon and that the information furnished below is general only and will not be construed to override or supersede or otherwise modify any actual insurance policy terms and conditions.

Note these data should, because of the technical nature of insurance, be furnished by the contractor's risk and insurance management staff. Please do not utilize abbreviations which can be misconstrued (e.g., N/A, which can be taken to mean Not Applicable, Not Available, None Available, or any number of other possibilities having different meanings).

Bearing in mind that indemnification under the provisions of Public Law 85-804 is applicable solely in respect of the events specified in the Definition of Unusually Hazardous Risk pertinent to this contract, please supplement the information entered in the matrix with appropriate narrative commentary to disclose and explain any unusual, noncustomary or special limitations or exclusionary language applicable to the insurances bearing upon the defined Unusually Hazardous Risk elements, together with such other information which may be regarded as specifically pertinent to the applicability of these insurances to this contract. Please do not incorporate any material or narrative extraneous or unrelated to this contract and its defined Unusually Hazardous Risk elements.

Questions regarding completion of these data may be referred to:

Manuel S. Teles, Team Leader, CIPR Team El Segundo, Defense Contract Management
Command
Voice Telephone: (310) 335-4350
FAX Telephone: (310) 335-4305
E-Mail: mteles@link.dcmdw.dla.mil

Requests for additional information relative to the data provided in the matrix should be referred to contractor's risk and/or insurance management point of contact below designated:

Name _____ Title _____
Telephone Number _____ FAX Number _____
Internet/E-Mail _____

Atch-1

[Company Name] Insurance Coverage Summary

[Date]

<u>Indemnifiable Risks</u>	<u>Bodily Injury or Property Damage to Third Parties *</u>	<u>Damage to or Loss of Use of Contractor Property *</u>	<u>Damage to or Loss of Use of Government Property *</u>
(a) The burning, explosion, or detonation of propellants (liquid, solid, or gaseous), their constituent components, or their degradation products during preparation, mixing, storage, or loading.			
(b) The burning, explosion, or detonation of liquid fueled rocket engines or solid fueled rocket motors during preparation, casting, curing, storing, testing, transporting, launch preparation, or launch.			
(c) The burning, explosion, or detonation of launch vehicles or their components during testing, transporting, launch preparation, or launch.			
(d) The toxic or other unusually hazardous properties of propellants (liquid, solid, or gaseous) or inert gases, their constituent ingredients, or their degradation products.			
(e) The flight or surface impact of launch vehicles or components or fragments thereof.			

* Enter types of coverage and limits of liability or amounts of insurance applicable. Note that the inclusion of FAR clause 52.245-2, Alternate 1, in the contract does NOT address all Government property, but only that which is furnished under the contract; there may also be subject to loss or damage other Government property, either furnished under other contract(s) or wholly unrelated to any contracts. In completing the Matrix, please distinguish among these three forms of Government property as to available insurance coverage and amounts, both within and without the contractor's care, custody, or control.

INSURANCE MATRIX CERTIFICATION BY CONTRACTOR

The above coverages are complete and accurate to the best of my knowledge as of this date. As required by FAR 50.403-1(b), the contractor shall immediately notify the Contracting Officer if, after submission of the indemnification request and prior to its approval, the dollar value of the contractor's insurance coverage varies by 10% or more from that stated in the contractor's indemnification request, or if other significant changes in the insurance coverage occur. For purposes of indemnification under PO 85-804, the above matrix shall be updated if requested to reflect the contractor's actual insurance coverage amounts in force as of the date of approval by the Secretary of the Air Force.

Date

Risk and/or Insurance Manager

Exact Title and Organization

GOVERNMENT VALIDATION OF CONTRACTOR'S UNDERLYING INSURANCE

We have reviewed the contractor's underlying insurance information as above displayed and, if applicable, as supplemented in appended documents, and concur that the information supplied is a true representation of the insurance coverage and amounts currently maintained by the contractor.

Date

Contractor Insurance/Pension Specialist

DLA/DCMC or Other Organization

Checklist of Required Safety Information

1. Is the contractor performing work under government contracts that contain safety clauses or are is the contractor currently in a preaward contract process? If performing work under government contracts that contain safety clauses, provide a brief description of the work performed and answer 2 through 6 below. If currently in a preaward contract process, answer 2 through 4 below using general industrial safety program practices.
2. Describe the contractor's safety program, including system safety efforts.
3. Provide a copy of the contractor's organization chart of key safety personnel.
4. Summarize the contractor's performance record in accordance with the safety plan over the last 12 months, including the status of any OSHA Notices of Violation.
5. Indicate when the last Post Award Safety Survey was conducted.
6. Indicate if the contractor is in compliance with the safety requirements contained in current contracts?

ATTACHMENT 3 - SAMPLE PCO REQUEST PACKAGE

Following is a sample PCO analysis and memorandum of decision. These two documents, plus the prime contractor request (excluding subcontract request packages), constitute the PCO request package. Using the sample PCO analysis as a guideline will ensure addressing all the requirements of the FAR regarding the analysis of indemnification requests. Also, note the attachments to the PCO analysis, when added, will demonstrate that DCMC insurance and safety specialists have reviewed and validated the contractor's insurance coverage and industrial safety programs, as well as that indemnification will facilitate the national defense.

MEMORANDUM FOR THE RECORD

SUBJECT: PCO Analysis of [Contractor Name] and Subcontractors' Request for Indemnification under Public Law 85-804 for Unusually Hazardous Risks in Connection with Performance of [System Name and Contract Number]

1. [Contractor Name] has requested indemnification under PL 85-804 for unusually hazardous risks in connection with performance of contract [Contract Number]. The purpose of this document is to satisfy the data and analysis requirements of FAR 50.403, as supplemented, and to recommend that the request be approved. [Contractor Name] request for indemnification addresses [Contractor Name] insurance coverage and that of the major subcontractors for which indemnification is being requested.

2. In accordance with FAR 50.403-2, the following information is provided in support of [Contractor Name] request and the PCO's recommendation for approval.

a. **Include pertinent contract/program information; period of performance, location and facilities involved (FAR 50.403-2(a)(1)):**

The [System Name] Expendable Launch Vehicle program is in direct response to National Space Policy Directive 1, dated 02 Nov 89, which calls for assured access to space to achieve all United States space goals. The [System Name] contract [Contract Number] is primarily a [Contract Type] with Award Fee. It is anticipated the contract will be awarded to [Contractor Name] on [Date]. The contract will provide for integration, manufacturing, test, delivery, and launch of [System Name] vehicles. The anticipated contract value is [Amount].

Launch operations will be performed at Cape Canaveral Air Station (CCAS) and Vandenberg Air Force Base (VAFB). Significant manufacturing activities for the [System Name] contractors occur at the following locations:

CONTRACTOR	LOCATION	RESPONSIBILITIES
[Contractor Name]	[Contractor Location]	Overall launch vehicle assembly, integration, checkout and launch.
[Subcontractor Name]	[Subcontractor Location]	Mixing, casting, and transportation of the [Description of Major Subsystem]
[Subcontractor Name]	[Subcontractor Location]	Manufacturing and assembly of [Description of Major Subsystem]
[Subcontractor Name]	[Subcontractor Location]	Manufacturing and assembly of [Description of Major Subsystem]
[Subcontractor Name]	[Subcontractor Location]	Manufacturing, assembly, and transportation of [Description of Major Subsystem]

[Subcontractor Name]	[Subcontractor Location]	Manufacturing and assembly of [Description of Major Subsystem]
[Subcontractor Name]	[Subcontractor Location]	Manufacturing, assembly and transportation of [Description of Major Subsystem]

Previous indemnification of contract **[Contract Number]**, the predecessor contract to the **[System Name]** was approved by the Secretary of the Air Force for the **[System Name]** vehicles on **[Date]**. Other similar indemnifications have also been approved for the **[System Names]**.

b. Include a definition of the unusually hazardous or nuclear risks involved in the proposed contract or program, with a statement that the parties have agreed to it. (FAR 50.403-2(a)(2))

The prime contractor and subcontractors have agreed to the following proposed definition of unusually hazardous risks:

**DEFINITION OF UNUSUALLY HAZARDOUS RISKS
CONTRACT **[Contract Number]****

For the purpose of clause FAR 52.250-1, entitled "Indemnification Under P.L. 85-804 (Apr 1984)," it is agreed that risks arising out of or resulting from:

(a) The burning, explosion, or detonation of propellants (liquid, solid, or gaseous), their constituent components or their degradation products during preparation, mixing, storage, or loading;

(b) The burning, explosion, or detonation of liquid fueled rocket engines or solid fueled rocket motors during preparation, casting, curing, storing, testing, transporting, launch preparation, or launch;

(c) The burning, explosion or detonation of launch vehicles or their components during testing, transporting, launch preparation or launch;

(d) The toxic or other unusually hazardous properties of propellants (liquid, solid, or gaseous) or inert gases, their constituent ingredients, or their degradation products;

(e) The flight or surface impact of launch vehicles or components or fragments thereof;

are unusually hazardous risks, to the extent such risks arise out of performance of this contract.

c. **Include a statement by responsible authority that the indemnification action would facilitate the national defense. (FAR 50.403-2(a)(3))**

The required determination was made by the AFPEO/SP on [Date] (attached).

d. **Include a statement that the contract will involve unusually hazardous or nuclear risks that could impose liability upon the contractor in excess of financial protection reasonably available. (FAR 50.403-2(a)(4))**

Performance on contract [Contract Number] involves unusually hazardous risks as defined in paragraph 2b above that could impose liability upon the contractors in excess of financial protection reasonable available. The unusually hazardous activities causing these risks are described under paragraphs 2.f, 2.i, and 2.j of this PCO analysis.

e. **Include a statement that the contractor and subcontractors are complying with applicable Government safety requirements. (FAR 50.403-2(a) (5)) Contracting Officers shall also assure that each of the contractors has an adequate, existing, and on-going industrial safety program prior to recommending indemnification. A copy of the current safety report issued by the cognizant Government reviewing activity shall be submitted with the request for indemnification.**

The cognizant DCMC safety specialist has certified the contractors are presently in compliance with applicable Government safety requirements and have adequate existing and on-going industrial safety programs (see attached DCMC memorandum). Below is a listing of the most current DCMC safety specialist reviews by contractor.

CONTRACTOR	LOCATION	DATE OF REVIEW BY DCMC SAFETY SPECIALIST
[Contractor Name]	[Contractor Location]	[Date]
[Subcontractor Name]	[Subcontractor Location]	[Date]
[Subcontractor Name]	[Subcontractor Location]	[Date]
[Subcontractor Name]	[Subcontractor Location]	[Date]
[Subcontractor Name]	[Subcontractor Location]	[Date]
[Subcontractor Name]	[Subcontractor Location]	[Date]
[Subcontractor Name]	[Subcontractor Location]	[Date]

f. **Include a statement of whether indemnification should be extended to subcontractors. (FAR 50.403-2(a)(6))**

[Contractor Name] has requested extension of indemnification to the following subcontractors:

- (1) [Subcontractor Name]
- (2) [Subcontractor Name]
- (3) [Subcontractor Name]
- (4) [Subcontractor Name]
- (5) [Subcontractor Name]
- (6) [Subcontractor Name]

It is necessary to indemnify each subcontractor because each of the products they provide for the [System Name] is susceptible to the unusually hazardous risks as defined above. Therefore, a catastrophic incident could result in extensive property damage, physical injury or loss of life. Even if fault cannot be placed on any one company, their status as major corporations places them all at risk of being named in related lawsuits. Resulting awards in excess of their insurance coverage could cause companies' productive capacities to be diminished such that they are rendered incapable of continuing their support of critical defense programs.

The [Subsystem Name] manufactured by [Subcontractor Name] and [Subcontractor Name] pose unusually hazardous risks because the propellant is highly flammable and creates toxic emissions. This could result in a catastrophic incident during the preparation, mixing, casting or curing of the propellant, the storage or transportation of the [Subsystem Name], the assembly or testing of the launch vehicle, or launch, with the attendant property damage and physical injury.

The [Subsystem Name] built by [Subcontractor Name] and [Subcontractor Name], when fully tanked with rocket fuel, could malfunction and send the launched rocket on an errant path, resulting in unintended flight or surface impact. This impact, exacerbated by the extremely flammable and toxic nature of the propellants, could result in extensive property damage, physical injury, or loss of life.

Although the electronic components made by [Subcontractor Name] and [Subcontractor Name] may not in themselves have the potential to cause catastrophic damage, when made an integral part of a space launch system such that their malfunction may cause the highly volatile rocket to malfunction with potentially catastrophic loss, the risk becomes unusually hazardous and the subcontractors' potential liability become extreme. Failure of the [Subsystem Name] could send the rocket off course with the potential for devastating surface impact. Failure of the [Subsystem Name] could make it impossible to intentionally destroy an errant rocket for safety reasons.

The cognizant DCMC insurance and safety specialists have certified the adequacy of subcontractors' insurance coverage and safety programs. In the event that one or more of the current major subcontractors merge or are replaced, or in the event it is determined that another subcontractor is exposed to unusually hazardous risks, Secretarial approval will be obtained prior to extending indemnification to the new subcontractor.

g. Include a description of any significant changes in the contractors' insurance coverage occurring since submission of the indemnification request. (FAR 50.403-2(a)(7))

There have been no significant changes in the contractors' insurance coverage occurring since submission of the indemnification request.

h. Ascertain that the contractor maintains financial protection in the form of liability insurance in amounts considered to be prudent in the ordinary course of business within the industry. Obtain evidence that such insurance is either in force or is available and will be in force during the indemnified period. A copy of the latest report on the contractors' insurance issued by the cognizant Government reviewing activity shall be submitted with the request for indemnification. Discuss any deductibles in applicable insurance coverage.

Defense Contract Management District West Contractor Insurance and Pension Review Group (DCMDW-OC) has certified that the contractors maintain liability insurance in amounts prudent in the ordinary course of business in the industry for the nature, size and products involved. DCMDW-OC considers the deductibles normal for the kind of insurance and risks involved (see attached DCMC memorandum).

CONTRACTOR	LOCATION	DATE OF REVIEW BY DCMDW-OC (CORPORATE INSURANCE AND PENSION REVIEW TEAM)
[Contractor Name]	[Contractor Location]	DCMC REVIEW [Date]
[Subcontractor Name]	[Subcontractor Location]	DCMC REVIEW [Date]
[Subcontractor Name]	[Subcontractor Location]	DCMC REVIEW [Date]
[Subcontractor Name]	[Subcontractor Location]	DCMC REVIEW [Date]
[Subcontractor Name]	[Subcontractor Location]	DCMC REVIEW [Date]
[Subcontractor Name]	[Subcontractor Location]	DCMC REVIEW [Date]
[Subcontractor Name]	[Subcontractor Location]	DCMC REVIEW [Date]

i. Include a clear, precise definition of the risk in establishing the relationship of the system/equipment to the intrinsically hazardous or nuclear nature of the instrumentality or activity.

A clear, precise definition of the risk is included in paragraph 2b above. A paragraph by paragraph analysis that establishes the relationship between the [System Name] launch system and the unusually hazardous risks follows:

The first area, which is addressed in paragraph (a) of the definition, covers risks associated with burning, explosion or detonation of propellants used in contract performance. These propellants come in several forms (i.e. liquid, solid or gaseous) and they are either highly explosive or flammable. Because of their volatile nature, there is potential for an incident which could result in bodily injury, loss of life or property damage which exceeds the contractors' insurance limits. Such an incident could occur at several points in the process -- during preparation, mixing, storage or loading of the propellants. I should also note that this paragraph

references constituent components or degradation products of the propellants because (1) some of the ingredients which make up the propellants are unusually hazardous before they are combined and (2) some of the propellants are converted into other chemical compounds, which are unusually hazardous, when exposed to the environment or through the normal burning process. This paragraph is intended to specifically cover these types of incidents.

The second area, which is addressed in paragraph (b) of the definition, covers risks associated with the burning, explosion or detonation of liquid fueled rocket engines or solid fueled rocket motors. This paragraph is intended to specifically address the unique risks associated with the solid rocket motors and liquid rocket engines. The nature of these components is such that there is potential for a catastrophic incident during manufacturing, testing, storage or transportation to the launch site, in addition to launch preparation and launch. As a result, this paragraph specifically identifies the additional risky activities associated with solid rocket motors and liquid rocket engines.

The third area, which is addressed in paragraph (c) of the definition, covers the risks associated with the burning, explosion, or detonation of the launch vehicles or their components during testing, transporting, launch preparation, or launch. This paragraph is intended to specifically address the unique risks associated with activities which occur at the launch bases in preparation for launch. This is perhaps the most risky time from an indemnification standpoint because all of the explosive launch vehicle components are in one location. Failure of a major component during testing, transportation of the vehicle, launch preparation or launch could result in a truly catastrophic event causing extensive bodily injury, property damage, or loss of life which exceeds the contractors' insurance limits. This paragraph is intended to protect the contractors against these risks.

The fourth area, which is addressed in paragraph (d) of the definition, covers risks associated with the toxic properties of propellants used in performance of these contracts. This paragraph is necessary because a number of the propellants used may be toxic to humans; they can cause immediate illness or an illness which does not surface for several years. The paragraph also specifically cites constituent ingredients or degradation products because (1) some of the ingredients which make up the propellants are toxic before they are combined and (2) some of the propellants are converted into other chemical compounds, which are toxic when exposed to the environment or through the normal burning. Finally, the paragraph also mentions inert gases because these gases are used to maintain the integrity of various components in storage, to check pressure vessels or to clean components in preparation for launch. Although these gases are inert on their own, there is chance for combination with other chemicals which could result in a chemical reaction that creates other toxic chemicals.

The fifth area, which is addressed in paragraph (e) of the definition, covers risks associated with the flight or surface impact of the launch vehicle or components or fragments thereof. This paragraph is necessary because the launch vehicle could crash into something (i.e. an airplane) during flight. Also, components or fragments of the vehicle could fall over land (or sea) during a normal launch or if there is an airborne explosion over a highly populated area. Either event could result in extensive property damage or bodily injury in excess of the contractors' insurance limits. Claims resulting from any of the potential incidents described above could render **[Contractor Name]** or its subcontractors incapable of continuing their support of DOD programs.

j. Elaborate on the “unusually” hazardous versus hazardous nature. Distinguish from hazardous activities in the private sector.

Failure of any of the [System Name] launch vehicle systems and/or components, particularly in the early boost phase, that causes flight outside the pre-established safety zones, combined with the range safety officer’s inability to effect destruct, caused either by a failure of the range detection system and transmitters or flight vehicle receiver/destruct system, could result in the vehicle impacting a highly populated area with the equivalent explosive force of many thousands of pounds of TNT. Additionally, the manufacture of the solid rocket motors involves highly flammable and toxic propellants which could unintentionally ignite and continue burning until the propellant supply is exhausted. The resultant conflagration and the spread of toxic chemicals from either scenario could cause death or injury to many persons and damage to property to the extent that it genuinely poses unusually hazardous risks. There are also launch and manufacturing risks which are hazardous, but not unusually hazardous, as there are in any industry, and such risks fall outside the definition and are not covered by this request.

Although the probability of a catastrophic occurrence is remote, the possibility does exist. Throughout the history of the [System Name] program there have been no flight related failures that have resulted in personal injury, death, or property damage. This can be attributed to the integrity of the [System Name] design and the stringent range requirements that have been imposed.

k. Include dates or measurable activities when indemnification will start and stop.

Indemnification will commence at the time the provision is placed on contract (anticipated for 16 April). The first launch is scheduled for [Date]. The indemnification coverage would extend through the anticipated period of performance of the contract, currently structured to be through [Date]. Additionally, it is recommended that indemnification cover risks beyond this period of performance, when the loss was caused by an incident that occurred during the period of performance of the indemnified contract. It is further recommended that indemnification approval extend through launch of all remaining [System Name] vehicles procured under the indemnified contract (or transferred to the contract from the predecessor contract), even if launch delays require contract extensions or follow-on contracts for the same efforts with the same contractors.

l. Define the programmatic objectives that cannot otherwise be accomplished and identify the programmatic consequences if indemnification is not granted. (Programmatic objectives include, but are not limited to, assuring or obtaining competition, avoiding prohibitive insurance costs or where obtaining insurance is precluded by the release of classified information. Reducing or eliminating the insurance costs charged directly to a program does not in itself establish that insurance costs are prohibitive.)

This is not an indemnification request in support of programmatic objectives.

m. When indemnification is to extend beyond acceptance and into the period of use, requests shall include a determination that the contractor has adequate system design, production engineering, and quality control procedures and systems. Ensure that risks are related to a specific time-frame for which indemnification is required and the request must indicate whether the time-frame extends beyond contract performance.

Government acceptance of [System Name] vehicles occurs upon launch. Because there is potential for a catastrophic incident beyond that point (i.e. flight or surface impact) the indemnification must extend into the period of use. The contractors must be indemnified for all phases of flight until insertion of the payload into orbit. This occurs within a matter of hours. There is the potential for bodily injury or loss of life beyond the contract periods of performance (i.e. where bodily injury or loss of life occurs beyond the period of performance but was the result of an incident which occurred during the period of performance of the indemnified contract).

It is determined by the Contracting Officer that the contractors have adequate system design, production engineering, and quality control procedures and systems. This determination is made on the basis of the evaluation performed by the Administrative Contracting Officer for the Defense Plant Representative Office, [Contractor Name and Location]. The evaluation was performed by experts in the areas of Government Quality Assurance, Operations Management, and Systems Engineering.

n. Include a determination by the Commander of the buying activity that indemnification is required to satisfy the programmatic objectives.

Since this request is not based on programmatic objectives, approval of the MAJCOM commander is not required.

3. In summary, the Contracting Officer concludes that indemnification of [Contractor Name] and the subcontractors identified in paragraph 2a above is appropriate. This is based on the fact that [Contractor Name] and its subcontractors could be held responsible for catastrophic incidents during performance of the subject contract. The potential exists for such incidents to result in liabilities that exceed the amounts of insurance reasonably available on the world market. DCMC has certified the contractor and subcontractors identified comply with applicable government safety requirements and maintain reasonable insurance coverage. Additionally, it has been determined that indemnification will facilitate the national defense. Based upon the above, approval is requested for indemnification of the contractor and identified subcontractors. Upon approval, FAR clause 52.250-1, "Indemnification Under Public Law 85-804" and the "Definition of Unusually Hazardous Risks" set forth in paragraph 2b above will be included in the prime contract and subcontracts.

MARK JENSEN
Contracting Officer

Attachments:

1. AFPEO/SP Determination
2. DCMC Safety Verification Memo
3. DCMC Insurance Verification Memo

MEMORANDUM OF DECISION

SUBJECT: Indemnification of **[Contractor Name]** for Unusually Hazardous Risks Involved in the **[System Name]** Program

[Contractor Name and Location] has requested indemnification under P.L. 85-804 as implemented by Executive Order 10789, for the unusually hazardous risks defined in Attachment 1 for performance under contract **[Contract Number]**, which provides for the integration, manufacturing, test, delivery and launch of **[System Name]** vehicles. In addition, Space and Missile Systems Center (SMC) has requested indemnification for any extensions or follow-on contracts with **[Contractor Name]** for the same efforts, through launch of all **[System Name]** vehicles procured under or transferred to contract **[Contract Number]**. Complete justification for this request has been provided in correspondence from **[Contractor Name]** and SMC.

Certain activities associated with the manufacture, test, transportation, storage, launch preparation and launch of **[System Name]** launch vehicles are intrinsically and unusually hazardous. These activities require the handling, use, and consumption of substances considered extremely hazardous because of their explosive and toxic nature. Although unlikely to occur, a catastrophic incident during contract performance could result in potential damage and liability far in excess of the contractor's insurance coverage. **[Contractor Name]** currently has a wide range of insurance coverage in force. Complete details of the coverages and deductibles for the defined unusually hazardous risks are contained in the contractor's request. The cognizant Defense Contract Management Command (DCMC) Contractor Insurance/Pension Corporate Review Group reviewed the contractor's insurance program and found it reasonable and satisfactory under normal business conditions. If the dollar value of coverage varies by more than 10 percent from that stated in the schedules provided, the contractor shall immediately submit to the contracting officer a description of the changes. I find that the insurance coverage identified in the schedules, as updated, represents an appropriate level of financial protection to permit indemnification.

The DCMC has also reviewed the contractor's safety program. The safety program and practices were deemed to be in compliance with the applicable safety requirements and are acceptable for performance of this contract.

The specific risks to be indemnified are defined in Attachment 1. No actual cost to the Government is anticipated as a result of the actions to be accomplished under this Memorandum. However, if the contractor suffers losses or incurs damages as a result of the occurrence of a risk defined in Attachment 1, and if those losses or damages, exclusive of losses or damages that are within the contractor's insurance deductible limits, are not compensated by the contractor's insurance, the contractor will be indemnified by the Government. The amount of this indemnification cannot be predicted, but it could entail many millions of dollars.

Aside from their importance to the **[System Name]** program, **[Contractor Name]** is a prime contractor or major subcontractor in other major defense programs such as the **[List of Major Programs]**. The potential uninsured damage and liability resulting from a catastrophic accident

could jeopardize the availability of the contractor's financial and productive capacities for defense programs. The loss of **[Contractor Name]** as a launch vehicle source could have serious implications on our existing defense system. Accordingly, I find that the indemnification of **[Contractor Name]** for performance of this contract for the unusually hazardous risks defined in Attachment 1 would facilitate the national defense.

Therefore, under the authority of P.L. 85-804 and Executive Order 10789, as amended, I hereby approve the indemnification of **[Contractor Name]** against those unusually hazardous risks defined in Attachment 1, to the extent claims arising thereunder are not covered by insurance, exclusive of any deductible amount, or otherwise. Indemnification under this authorization shall be effected by including the clause at FAR 52.250-1, entitled "Indemnification Under P.L. 85-804 (Apr 1984)" and Attachment 1 in contract **[Contract Number]**. This approval will continue to cover any extensions or follow-on contracts with **[Contractor Name]** for the same efforts, through launch of all **[System Name]** vehicles procured under or transferred to contract **[Contract Number]**.

[Contractor Name] has requested indemnification be extended to the major subcontractors specified below with respect to the risks defined in Attachment 1.

CONTRACTOR	LOCATION	RESPONSIBILITIES
[Contractor Name]	[Contractor Location]	Overall launch vehicle assembly, integration, checkout and launch.
[Subcontractor Name]	[Subcontractor Location]	Mixing, casting, and transportation of the [Description of Major Subsystem]
[Subcontractor Name]	[Subcontractor Location]	Manufacturing and assembly of [Description of Major Subsystem]
[Subcontractor Name]	[Subcontractor Location]	Manufacturing and assembly of [Description of Major Subsystem]
[Subcontractor Name]	[Subcontractor Location]	Manufacturing, assembly, and transportation of [Description of Major Subsystem]
[Subcontractor Name]	[Subcontractor Location]	Manufacturing and assembly of [Description of Major Subsystem]
[Subcontractor Name]	[Subcontractor Location]	Manufacturing, assembly and transportation of [Description of Major Subsystem]

Approval to indemnify the subcontractors specified above is granted to the extent claims arising thereunder are not covered by insurance, exclusive of any deductible amount, or otherwise, provided the contracting officer approves inclusion of the clause in each subcontract. This approval may only be granted in the case where the contracting officer determines that the subcontractors' insurance coverage represents an appropriate level of financial protection and that, based upon a safety inspection, the subcontractors adhere to acceptable safety practices.

Attachment:

Definition of Unusually Hazardous Risks

DEFINITION OF UNUSUALLY HAZARDOUS RISKS
CONTRACT [**Contract Number**]

For the purpose of clause FAR 52.250-1, entitled “ Indemnification Under Public Law 85-804 (APR 1984)”, it is agreed that risks arising out of or resulting from:

(a) The burning, explosion, or detonation of propellants (liquid, solid, or gaseous), their constituent components or their degradation products during preparation, mixing, storage, or loading;

(b) The burning, explosion, or detonation of liquid fueled rocket engines or solid fueled rocket motors during preparation, casting, curing, storing, testing, transporting, launch preparation, or launch;

(c) The burning, explosion or detonation of launch vehicles or their components during testing, transporting, launch preparation, or launch;

(d) The toxic or other unusually hazardous properties of propellants (liquid, solid, or gaseous) or inert gases, their constituent ingredients, or their degradation products;

(e) The flight or surface impact of launch vehicles or components or fragments thereof;

are “unusually hazardous risks” to the extent such risks arise out of performance of this contract.

ATTACHMENT 4 - SAMPLE STAFF SUMMARY SHEETS

Following are two sample AF Forms 1768, *Staff Summary Sheet*. The first is used at the buying activity level for contracting and legal coordination and System Program Director approval, if applicable, of the PCO request package. It should be submitted along with the PCO request to SAF/AQCS. The second staff summary sheet is used in the secretariat to staff the request package to the Secretary of the Air Force for approval. It is typically prepared by SAF/AQCS; however, it can be drafted by the PCO.

Staff Summary Sheet

	To	Action	Signature (Surname), Grade, Date		To	Action	Signature (Surname), Grade, Date
1	SMC/PK	COORD					
2	SMC/JAQ	COORD					
3	SMC/CL	COORD					
Grade and Surname of Action Officer			Symbol	Phone			Suspense Date
Mark Jensen			SMC/CLK	33933			
Subject							SSS Date
Indemnification for Unusually Hazardous Risks--[System Name] Launch Programs							

Summary

1. Purpose. To obtain Secretary of the Air Force approval to indemnify **(Contractor Name)** for unusually hazardous risks in performance of contract **(Contract Number)** involving production and launch of **[System Name]** vehicles.

2. Background. In accordance with P.L. 85-804, as implemented by the Federal Acquisition Regulation, authority to indemnify contractors for unusually hazardous or nuclear risks, including extension of such indemnification to subcontracts, shall be exercised only by the Secretary of the agency. Tab 1 is a Memorandum of Decision. By signing this memorandum, the Secretary of the Air Force will authorize the Procuring Contracting Officer (PCO) to incorporate indemnification provisions in the prime contract mentioned in paragraph 1 above, and to incorporate identical provisions into subcontracts identified for indemnification in the PCO Analysis following the PCO's confirmation that the identified subcontractors maintain adequate insurance coverage and adequate safety programs. The contractor's indemnification request (Tab 2) and the Procuring Contracting Officer (PCO) analysis of that request (Tab 3) justify the need for Government indemnification of activities associated with the manufacture, storage, transportation, test, launch preparation, and launch of **[System Name]** systems. These activities, which are defined under Tab 1, are considered unusually hazardous because of their explosive or toxic nature. They could result in catastrophic losses that could impose liability upon the contractor in excess of appropriate financial protection reasonably available, jeopardize the contractor's financial position, or disrupt its productive capabilities, thereby hindering the Government's ability to deploy defense critical assets on a timely and uninterrupted basis. Because of this, the Program Executive Officer has determined that indemnification will facilitate the national defense (determination included under Tab 1).

3. Views of Others. The PCO Analysis (Tab 3) includes as attachments a determination by the Program Executive Officer (to be signed) that indemnification will facilitate the national defense, and memorandums from Defense Contract Management Command (DCMC) insurance and safety specialists describing why the prime contractor's insurance coverage and safety programs are adequate.

4. Recommendation. SMC/PK, SMC/JAQ, and SMC/CL coordination.

MARK JENSEN
Deputy Contracts Chief, Launch Programs

Tabs

1. Memorandum of Decision
2. Contractor Indemnification Request
3. PCO Analysis

<h2 style="margin: 0;">Staff Summary Sheet</h2>							
	To	Action	Signature (Surname), Grade, Date		To	Action	Signature (Surname), Grade, D
1	AFPEO/SP	SIG		4	SAF/US	COORD	
2	SAF/AQ	APPR			SAF/OS	SIG	
3	SAF/GC	COORD					
Grade and Surname of Action Officer Major Bratten			Symbol SAF/AQCS	Phone 697-6400			Suspense Date
Subject Indemnification for Unusually Hazardous Risks--[System Name] Launch Programs							SSS Date
Summary							
<p>1. Purpose. To obtain Secretary of the Air Force approval to indemnify (Contractor Name) for unusually hazardous risks in performance of contract (Contract Number) involving production and launch of [System Name] vehicles.</p> <p>2. Background. In accordance with P.L. 85-804, as implemented by the Federal Acquisition Regulation, authority to indemnify contractors for unusually hazardous or nuclear risks, including extension of such indemnification to subcontracts, shall be exercised only by the Secretary of the agency. The attached information supporting indemnification has been prepared in accordance with the Air Force Indemnification Guide for Unusually Hazardous or Nuclear Risk, dated 31 Jan 97. Tab 1 is a Memorandum of Decision. By signing this memorandum, the Secretary of the Air Force will authorize the Procuring Contracting Officer (PCO) to incorporate indemnification provisions in the prime contract mentioned in paragraph 1 above, and to incorporate identical provisions into subcontracts identified for indemnification in the PCO Analysis following the PCO's confirmation that the identified subcontractors maintain adequate insurance coverage and adequate safety programs. The contractor's indemnification request (Tab 2) and the Procuring Contracting Officer (PCO) Analysis of that request (Tab 3) justify the need for Government indemnification of activities associated with the manufacture, storage, transportation, test, launch preparation, and launch of [System Name] systems. These activities, which are defined under Tab 1, are considered unusually hazardous because of their explosive or toxic nature. They could result in catastrophic losses that could impose liability upon the contractor in excess of appropriate financial protection reasonably available, jeopardize the contractor's financial position, and disrupt its productive capabilities, thereby hindering the Government's ability to deploy defense critical assets on a timely and uninterrupted basis.</p> <p>3. Views of Others. The PCO Analysis (Tab 3) includes as attachments a determination by the Program Executive Officer that indemnification will facilitate the national defense, and memorandums from Defense Contract Management Command (DCMC) insurance and safety specialists describing why the prime contractor's insurance coverage and safety programs are adequate.</p> <p>4. Recommendation. The Program Executive Officer sign the determination attached to the PCO Analysis (Tab 3) that indemnification will facilitate the national defense. The Secretary of the Air Force sign the Memorandum of Decision at Tab 1 authorizing indemnification for unusually hazardous risks.</p>							
TIMOTHY P. MALISHENKO, Brig Gen, USAF Deputy Assistant Secretary (Contracting) Assistant Secretary (Acquisition)				Tabs 1. Memorandum of Decision 2. Contractor Indemnification Request 3. PCO Analysis			

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ATTACHMENT 5 - RESPONSIBILITY MATRIX

Following is a matrix indicating the responsibilities of participants on an indemnification IPT. This matrix will assist the PCO and prime contractor when identifying individuals for an IPT and assigning them responsibilities.

	Ktr	PCO	SPO	Buying Activity PKC	Buying Activity JA	Subs	DCMC Ins	DCMC Safety	SAF/ AQCS	SAF/ GCQ
Kickoff Mtg w/ Ktr	C	P				C	C	C		
Sub Pkg to Prime	C	C				P				
Prime Request	P	C								
Package										
SECAF Memo/SSS		P		C	C				C	
PCO Analysis		P		C	C				C	
Safety Analysis		C		C	C		P	P	C	
Insurance Assessm't		C		C	C				C	
PEO/DAC Determ		C	P	C	C				C	
Coordination										
SPO		C	P							
Buying Activity/PK		C		P						
Buying Activity/JA		C			P					
Info Cy to Buying Activity/CC		C								
Pentagon Coord/Appr		C							P	P

P - Indicates OPR

C - Indicates OCR

ATTACHMENT 6 - REFERENCES

1. Public Law (PL) 85-804, National Defense Contract Authorization, 50 USC 1431
2. Executive Order No. 10789, Authorizing Agencies of the Government to Exercise Certain Contracting Authority in Connection with National-Defense Functions and Prescribing Regulations Governing the Exercise of Such Authority
3. FAR 50.306, Disposition
4. FAR 50.403, Special Procedures for Unusually Hazardous or Nuclear Risks
5. FAR 52.250-1, Indemnification Under Public Law 85-804
6. DFARS 235.070, Indemnification Against Unusually Hazardous Risks
7. DFARS 252.235-7000, Indemnification Under 10 USC--Fixed Price
8. DFARS 252.235-7001, Indemnification Under 10 USC--Cost /Reimbursement
9. AFFARS 5350.403, Special Procedures for Unusually Hazardous or Nuclear Risks
10. AFMCFARS 5335.070, Indemnification Against Unusually Hazardous Risks
11. AFMCFARS 5352.235-9000, Definition of Unusually Hazardous Risks
12. SMC/PK Procedures Book, 5335.070 (DOD), Indemnification Against Unusually Hazardous Risks